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Via Electronic Filing

August 2, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, DC 20554

Re: Written Ex Parte Submission – CG Docket No. 10-213

Dear Ms. Dortch:

The Consumer Electronics Association (“CEA”), by the undersigned, hereby submits this *ex parte* communication to address certain statements regarding CEA’s pending limited petition for waiver (“CEA Waiver Petition”)¹ made by Telecommunications for the Deaf and Hard of Hearing, Inc., et al. (“TDI”) in its comments filed on July 26, 2012, in the above-referenced docket (“TDI Comments”).² The CEA Waiver Petition, which was filed on March 22, 2012, requests a limited waiver of the rules governing Advanced Communications Services (“ACS”) for Internet-Protocol (“IP”)-enabled televisions (“IP-TVs”) and IP-enabled digital video players (“IP-DVPs”) manufactured before July 1, 2016. As CEA previously has shown, the CEA Waiver Petition satisfies the

¹ CEA, Petition for Waiver, CG Docket Nos. 10-213 (filed Mar. 22, 2012) (“CEA Waiver Petition”).

² TDI Comments on the Accessibility of Communications Technologies, CG Docket No. 10-213, at 3 (filed July 26, 2012) (corrected copy) (“TDI Comments”). The TDI Comments responded to *Consumer and Governmental Affairs Bureau Seeks Comment on the Accessibility of Communications Technologies for the First Biennial Report Under the Twenty-First Century Communications and Video Accessibility Act*, CG Docket No. 10-213, Public Notice, DA 12-1125 (rel. July 12, 2012) (“Public Notice”). CEA also filed comments in response to the Public Notice. See CEA PN Comments – Accessibility of Communications Technologies, CG Docket No. 10-213 (filed July 25, 2012) (“CEA PN Comments”).

Commission's specific waiver rules for ACS as well as its general waiver standard.³ Here, CEA briefly responds to three baseless and erroneous *ad hominem* allegations regarding the consumer electronics industry. As discussed in more detail below, the Commission should dismiss these claims and grant the CEA Waiver Petition expeditiously.

First, TDI wrongly asserts that the CEA Waiver Petition illustrates a “reluctance” on the part of the industry to consider universal design principals during the product design stage.⁴ This simply is not the case. As CEA recently informed the Commission, CEA's members that are subject to the ACS rules are working hard to successfully comply with these new rules within the allotted phase-in periods.⁵ CEA has been assisting its members' compliance efforts through member alerts, an informational webinar, and compliance manuals and summaries. As part of these efforts, CEA and its members recognize that compliance with the rules requires taking accessibility into account at the product design stage. Indeed, the CEA Waiver Petition actually demonstrates that consumer electronics companies *are* thinking about accessibility at the product design stage—this is why CEA seeks expeditious action on the CEA Waiver Petition, because manufacturers are beginning to plan now for upcoming products that could be affected by the waiver.

Second, TDI has no basis for arguing that “some industry representatives would prefer to retrofit accessibility features years later at higher expense, wasting money”—claims for which TDI fails to provide any support whatsoever.⁶ The CEA Waiver Petition is not about “retrofitting” accessibility features to existing ACS functionality. CEA has demonstrated that IP-TVs and IP-DVPs are still at a nascent stage. Consumer electronics manufacturers expect many changes in IP-TV and IP-DVP design between now and July 1, 2016, and the introduction of accessible ACS will be just one of these changes. Nor is “years later” a fair term for TDI to use, considering that CEA has requested a modest, time-limited waiver that reflects a delay in compliance for less than a single product life cycle as defined under the FCC's rules.

There also are no grounds for TDI's contention that the CEA Waiver Petition would create for accessibility features a “higher expense,” which would “wast[e] money.” To the contrary, CEA and others have shown that denying the requested waiver and applying the ACS rules to IP-TVs and IP-DVPs manufactured before July 1, 2016, could result in additional costs that could skew what manufacturers are able to offer and/or what consumers are willing to buy. For instance, Panasonic has noted that “[t]he additional costs and complexity of complying with the ACS regulations will chill manufacturers’

³ See CEA Waiver Petition; *see also* CEA Reply Comments Regarding Petition for Waiver, CG Docket No. 10-213 (filed June 25, 2012).

⁴ TDI Comments at 3.

⁵ See CEA PN Comments at 5.

⁶ See TDI Comments at 3.

incentives to include [ACS] features as part of their IP-TVs and IP-DVPs.”⁷ Moreover, in his economic analysis of the CEA Waiver Petition, Dr. Gregory L. Rosston concluded:

[G]iven the relatively low penetration and expected penetration and use of IP-TVs and DVPs for ACS over the next few years, the available alternatives, and the fact that market forces will work to introduce additional accessibility, **imposing the accessibility mandate on IP-TVs and IP-DVPs under the current schedule, rather than waiting a short period of time as requested in the CEA Waiver Petition, could increase the cost to manufacturers and actually reduce the availability and increase the consumer price of ACS on IP-TVs and IP-DVPs for all, including the community most desiring accessibility to ACS.**⁸

Finally, the Commission should ignore TDI’s unfair and baseless claim that “some industry representatives would prefer to . . . undermin[e] the civil rights of consumers in the meantime, perpetuating another ‘digital divide.’”⁹ The consumer electronics industry wants all Americans to buy its products and would never countenance a digital divide. CEA member companies are committed to the goal of continually increasing accessibility for people with disabilities and to complying fully with the applicable accessibility laws and regulations. In fact, contrary to TDI’s unfounded allegation, the requested waiver for IP-TVs and IP-DVPs is intended to *bolster* the long-term availability of such devices with accessible ACS functionality. Absent the waiver, manufacturers may be forced to remove ACS capabilities from such devices. This result would harm both consumers with disabilities and those without.

Moreover, grant of the waiver is unlikely to have any practical impact in limiting the accessibility of ACS for consumers who are viewing video programming using IP-TVs and IP-DVPs. As Panasonic explained in supporting the CEA Waiver Petition, its data shows widespread use of “second screens” such as smartphones and tablets for ACS features (rather than use of ACS on the screen of an IP-TV or through an IP-DVP), which are subject to the accessibility rules for ACS.¹⁰ Also, as noted in the Rosston Analysis, consumers who wish to perform ACS functions on a television screen already have—and will continue to have—ready alternatives to utilizing the ACS functionality of IP-TVs. For example, a consumer could simply connect a tablet to a television screen, which would enable him or her to perform ACS functions utilizing a television screen. Because tablets are subject to the ACS rules, presumably consumers with disabilities could also

⁷ See Comments of Panasonic Corp. of North America Supporting CEA, CG Docket No. 10-213, at 8–9 (filed June 14, 2012) (“Panasonic Comments”).

⁸ Analysis by Gregory L. Rosston regarding the CEA Petition for Waiver, at 2, *attached to* Letter from Julie Kearney, Vice President, Regulatory Affairs, CEA, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 10-213 (filed July 13, 2012) (“Rosston Analysis”) (emphasis added).

⁹ TDI Comments at 3.

¹⁰ See Panasonic Comments at 7–8, 11; *see also* CEA Reply Comments Regarding Petition for Waiver, CG Docket No. 10-213, at 6 (filed June 25, 2012).

perform ACS functions utilizing a television screen by following this method.¹¹ In sum, there is no intended or actual effect of perpetuating a digital divide, and TDI's allegation is unfounded and absolutely inappropriate.

Based on the overwhelming record in support of the CEA Waiver Petition, CEA urges the Commission to grant the petition as soon as possible and to disregard the contentions of TDI discussed above.

Pursuant to Section 1.1206 of the Commission's rules,¹² this letter is being electronically filed with your office. Please let the undersigned know if you have any questions regarding this filing.

Respectfully submitted,

/s/ **Julie M. Kearney**

Julie M. Kearney
Vice President, Regulatory Affairs

¹¹ See Rosston Analysis at 8.

¹² 47 C.F.R. § 1.1206.